



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

SCHOOLS AND SCHOOL DISTRICTS: POWER OF SCHOOL BOARDS TO COMPROMISE CLAIMS.—Boards of school trustees have power to compromise threatened litigation against their districts. Such is the decision of *Smith v. Cloud*.¹ At first sight, this holding seems out of line with the prevailing view of the nature of school districts and the powers of their officers. For school districts have only a limited number of corporate powers,² and while they have sometimes been included within the general name "municipal corporations,"³ accuracy demands that they fall within the class of corporations known as quasi corporations.⁴ Accordingly, the Supreme Court of California has said that a school district is a public corporation of a quasi municipal character.⁵ Consequently, as the powers of municipal corporations are, as shown by Judge Dillon's oft-quoted statement,⁶ limited, a fortiori the powers of school districts must be very limited. In fact, it has been said by the courts of New Hampshire and California that school districts are quasi corporations with the most limited powers known to the laws.⁷

But courts have repeatedly said that school directors or trustees have such powers as result by fair implication from the powers expressly granted to them.⁸ Is it not reasonable, therefore,

Williams v. Pomeroy Coal Co. (1882), 37 Ohio St. 583, 6 Morr. Min. Rep. 195; *Troup v. Smith* (1822), 20 Johns. 33. See cases collected in *Lightner Mining Co. v. Lane*, supra.

¹ (Sept. 28, 1915), 21 Cal. App. Dec. 394.

² Dillon, *Municipal Corporations*, 5th ed., § 37. The power of compromising claims is not granted to school districts by Cal. Pol. Code, § 1575-ff.

³ Elliott, *Public Corporations*, 2d. ed., p. 9; *Winspear v. District Township of Holman* (1873), 37 Iowa, 542; *Curry v. District Township of Sioux City* (1883), 62 Iowa, 102, 17 N. W. 191.

⁴ Dillon, *Municipal Corporations*, § 36; *Abbott, Municipal Corporations*, § 1073; *Andrews v. Estes* (Me., 1834), 26 Am. Dec. 521 n; *Andrews v. Estes* (1834), 11 Me. 267, n.

⁵ *Hughes v. Ewing* (1892), 93 Cal. 414, 28 Pac. 1067. Other cases to the same effect are cited in 3 *California Law Review*, 195. As to school districts in this state, see the second chapter of "Chapters on the School Law of California," 3 *California Law Review*, 195-215. (The first article of this series, "The Public School System," is to be found in 2 *California Law Review*, 459-479.)

⁶ 1 Dillon, *Municipal Corporations*, 237; "It is a general and undisputed proposition of law that municipal corporations possess and can exercise the following powers and no others; first, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation—not simply convenient, but indispensable."

⁷ *Harris v. School Dist.* (1853), 28 N. H. 58, 62; *Skelly v. School Dist.* (1894), 103 Cal. 652, 658, 37 Pac. 643.

⁸ 25 Am. & Eng. Encyc. Law, 56; *Seeger v. Mueller* (1890), 133 Ill. 86, 24 N. E. 513; *Union School Dist. v. First Nat'l Bank of Crawfordsville* (1885), 102 Ind. 464, 2 N. E. 194; *Jay v. School Dist. No. I* (1900),

to imply that the power to compromise claims flows from the power to sue and be sued which is expressly granted to school boards in California?⁹ In regard to municipal corporations, there is abundant authority to the effect that they may compromise claims against them.¹⁰ In one case the court asked, "If they have the power to accomplish an object, have they not the choice of the legal means by which it may be done?"¹¹ The same inquiry is relevant to school boards and the question of their power to compromise claims. The board in the principal case, having power to employ teachers¹² and to sue and be sued,¹³ rendered its district liable for the breach of the contract by which it employed the plaintiff as a teacher.¹⁴ And, if the board had waited for suit to be brought on the contract, the measure of damages in favor of the teacher would *prima facie* have been the wages agreed to be paid, less what the teacher might by the exercise of reasonable diligence have earned or actually did earn in the same line of employment.¹⁵ Surely, it was not an unreasonable assumption of power for the board to avoid the threatened litigation by compromising for two hundred dollars. Neither is any serious violence done to the notion of the limited powers of school boards if we say of them, as has been said of other boards,¹⁶ that their power to sue and defend suits carries with it, by necessary implication, the power to make bona fide compromise adjustments of such suits.

G. B. W.

TRUSTS: NECESSITY OF SEGREGATION OF TRUST FUND.—In *Molera v. Cooper*¹ the defendant in a suit by an executor on a promissory note set up the defense that the testator, in consideration of the defendant's agreeing that he would hold the amount of

24 Mont. 219, 61 Pac. 250; *Wright v. Rosenbloom* (1900), 52 N. Y. App. 579, 66 N. Y. Supp. 165; *Honaker v. Board of Education* (1896), 42 W. Va. 170, 57 Am. St. Rep. 847.

⁹ Cal. Pol. Code, § 1575.

¹⁰ *O'Brien v. Mayor of New York* (1898), 25 Misc. 219, 55 N. Y. Supp. 50; *Dillon, Municipal Corporations*, § 821; *Beach, Public Corporations*, § 658; *Abbott, Municipal Corporations*, § 490; *Campbell v. Upton* (1873), 113 Mass. 67.

¹¹ *Augusta v. Leadbetter* (1839), 16 Me. 45.

¹² Cal. Pol. Code, § 1617, subd. 7.

¹³ Cal. Pol. Code, § 1575.

¹⁴ 25 Amer. & Eng. Encyc. Law, 12; *Jackson v. Spera* (1893), 8 Ind. App. 330, 35 N. E. 482; *Johnson v. School Dist.* (Ky., 1897), 38 S. W. 861; *Mingo v. School Dist.* (Ky., 1902), 68 S. W. 483; *Ewing v. School Directors* (1887), 2 Ill. App. 458; *Scott v. School Dist.* (1881), 51 Wis. 554, 8 N. W. 398; *Elliott, Public Corporations*, 2d. ed., 45.

¹⁵ 35 Cyc. 1097; *Jackson County School Directors v. Kimmel* (1889), 31 Ill. App. 537; *Splaine v. School Dist.* (1898), 20 Wash. 74, 54 Pac. 766.

¹⁶ *Board of Com'rs v. Tollman* (1906), 145 Fed. 753, 772; 1 *Dillon, Municipal Corporations*, § 821 and notes.

¹ (Sept. 27, 1915), 21 Cal. App. Dec. 363.